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J.S., Appellant)	
)	
and)	Docket No. 16-0716
)	Issued: July 19, 2016
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Salisbury, NC, Employer)	
)	

Case Submitted on the Record

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

On February 29, 2016 appellant filed a timely appeal from a January 4, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has established a recurrence of disability for intermittent periods commencing November 8, 2011 causally related to accepted right knee and lumbar sprains and a right upper extremity contusion.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances outlined in the Board's prior decision are incorporated herein by reference. The relevant facts are set forth below.

OWCP accepted that on October 8, 2009 appellant, a 59-year-old health technician, sustained a lumbar sprain and right collateral ligament knee sprain in the performance of duty when she slipped and fell down a stairway. Appellant was followed by Dr. Christopher K. Nagy, the attending Board-certified orthopedic surgeon, who noted improving lumbar, right shoulder, and right knee symptoms in reports through March 2010.² In a May 26, 2010 report, Dr. Nagy noted that appellant continued to have limited motion in the right shoulder. Appellant underwent surgical intervention in the past, but continued to have positive impingement findings and chronic pain. She returned to light-duty work.

On June 1, 2010 appellant claimed a schedule award (Form CA-7). In a July 8, 2010 letter, Dr. Nagy advised that he was not formally trained in evaluating impairment and requested that OWCP refer appellant to an appropriate specialist. An OWCP medical adviser reviewed the medical record on July 8, 2010 and noted that the accepted conditions had resolved with no evidence of permanent impairment.

By decision dated July 28, 2010, OWCP denied appellant's schedule award claim. Appellant requested a review of the written record and submitted additional evidence.

In an August 11, 2010 report, Dr. Nagy found that appellant had reached maximum medical improvement from the accepted sprains. Due to her improvement and lack of findings of any specific physiologic abnormality, he explained that "there will be no impairment rating for [appellant] in regard to the sprain of her back and the lateral ligament of her knee." Dr. Nagy added that the impairment rating for her lumbar spine and knee sprain was zero "as both have resolved over the passage of time."

By decision dated December 2, 2010, an OWCP hearing representative affirmed the denial of appellant's schedule award claim, finding that the medical evidence did not establish any permanent impairment of a scheduled member of the body due to the accepted injuries.

On March 2, 2011 Dr. Nagy advised that when he saw appellant following her fall she was complaining of pain in her shoulder, which has resolved as of March 3, 2009 following August 2009 surgery. Although the October 8, 2009 incident was not fully responsible for appellant's shoulder problems, he found that she did sustain an injury to her shoulder at that time, which further aggravated her condition and continued to cause disability and pain with use of the arm in general.

On or about June 16, 2011 appellant filed a reconsideration request which was forwarded to the employing establishment.

² A March 18, 2010 lumbar magnetic resonance imaging (MRI) scan showed a diffuse disc bulge at L4-5.

By decision dated July 14, 2011, OWCP denied modification, finding that the accepted conditions resolved without permanent impairment. It noted that Dr. Nagy offered no diagnosis of appellant's shoulder condition and made no distinction between her current condition and an employment-related right shoulder injury she sustained on April 12, 2005. OWCP also found that there was no basis to expand the acceptance of appellant's claim to include a shoulder condition. Appellant disagreed and requested reconsideration by placing an "x" on the applicable line on the appeal form accompanying the July 14, 2011 decision. She did not submit additional evidence.

By decision dated August 10, 2011, OWCP denied appellant's request for reconsideration as it neither raised substantive legal questions nor included new and relevant evidence. Appellant then appealed to the Board.

During the pendency of the first appeal, on March 9, 2012, appellant submitted a claim for a recurrence of disability (Form CA-2a) commencing October 9, 2009.

By decision and order issued April 6, 2012,³ the Board affirmed OWCP's July 14, 2011 decision denying appellant's schedule award claim, finding that the medical evidence of record did not support that the accepted October 8, 2009 injuries caused any permanent impairment to a scheduled member of the body. The Board also affirmed OWCP's August 10, 2011 decision denying appellant's request for reconsideration, finding that as it consisted only of the "x" on the appeal form, it did not raise substantive legal questions nor include new and relevant evidence.

In an April 13, 2012 letter, OWCP expanded the claim to accept a resolved right arm contusion. It also advised appellant of the type of evidence needed to establish her claim for recurrence of disability, including a physician's opinion supporting a causal relationship between the accepted injuries and her condition on and after October 9, 2009.

Appellant submitted chart notes from Dr. Nagy dated April 13 to July 27, 2011, noting continued pain and limited motion in the right shoulder and right knee.

By decision dated May 21, 2012, OWCP denied appellant's claim for recurrence of disability, finding that the medical evidence did not establish a causal relationship between appellant's shoulder condition and the accepted injuries.

On May 31, 2012 appellant requested a review of the written record. She submitted additional medical evidence.

In a July 29, 2011 letter, Dr. Nagy noted appellant's history of multiple right rotator cuff problems and surgery. He opined that the October 2009 fall "caused her to continue to have difficulties with her shoulder and essentially was an aggravation of a preexisting shoulder condition." Dr. Nagy noted abduction limited to 60 degrees, with limited internal and external rotation. He opined that appellant had 15 percent permanent impairment of her right upper extremity.

³ Docket No. 11-2006 (issued April 6, 2012).

In a May 18, 2012 letter, Dr. Nagy opined that, although appellant had a right shoulder condition prior to the October 2009 fall, the incident worsened her symptoms. He further opined that there “may have been some irritation or inflammation of her preexisting shoulder condition” which should be accepted as compensable. Dr. Nagy explained that it was “difficult to differentiate” whether appellant’s ongoing right shoulder symptoms were due to the October 14, 2009 fall or the preexisting condition. He offered that the “truth of this matter will never be fully revealed,” so he gave appellant “the benefit of the doubt as she continue[d] to be significantly limited with her shoulder which was likely the result of the combination of the injury she sustained in 2009 as well as aggravation of the secondary injury.”

By decision dated September 24, 2012, an OWCP hearing representative affirmed OWCP’s May 21, 2012 decision, finding that the medical evidence of record was insufficient to establish causal relationship. She noted Dr. Nagy’s opinion that the etiology of appellant’s right shoulder condition would “never be fully revealed.”

Appellant underwent left shoulder surgery on April 17, 2013 with postoperative physical therapy through July 2013. She returned to light-duty work on an unspecified date.

On October 30, 2013 appellant filed an occupational disease claim (Form CA-2) alleging a full-thickness rotator cuff tear of the left shoulder sustained on or before October 8, 2009. She asserted that she injured her left shoulder in the October 14, 2009 fall, but did not have x-rays taken at the time of the injury. Appellant first related the condition to work factors on November 29, 2012, because the “extreme pain and swelling was the same as the previous right shoulder injury as in 2007 which resulted in surgery and permanent impairment of the right shoulder.” She therefore favored her left shoulder, resulting in “the same injury and surgery” to the left shoulder as on the right. Appellant asserted that pulling patients in Geri-chairs and handling their lunch trays aggravated her left shoulder condition.

Dr. William Furr, an attending Board-certified orthopedic surgeon, opined on August 12, 2013 that appellant’s left shoulder symptoms were consistent with a fall down stairs. On May 14, 2014 he opined that appellant’s left shoulder condition was related to the 2009 injuries, with deterioration due to overuse and compensating for the right shoulder. Dr. Furr opined that the April 17, 2013 left shoulder surgery “stems from the injury in 2009 and there was just the issue of coverage.”

In a July 18, 2014 report, Dr. Furr noted swelling and mild effusion in the right knee, paraspinal tenderness, restricted lumbar motion, tenderness of the anterior right shoulder, positive coracoacromial, Neer’s, and Hawkin’s tests, and restricted elevation. Right shoulder x-rays demonstrated mild acromioclavicular joint changes. Right knee and lumbar x-rays showed multiple degenerative changes. Dr. Furr opined that appellant’s right shoulder, right knee, and lumbar conditions were all related to the October 2009 injuries.

On June 8, 2015 appellant filed a claim for recurrence of disability (Form CA-2a), claiming that she was disabled from work for unspecified periods on and after November 8, 2011 due to sequelae of October 8, 2009 injuries. She asserted that she injured her right and left shoulders when she fell down steps on October 8, 2009. The employing establishment

confirmed that appellant was on light duty at the time of the claimed recurrence. Appellant did not stop work.

In an undated letter received on August 17, 2015, Dr. Furr provided a history of injury and treatment, relating appellant's assertion that she injured her left shoulder in the October 8, 2009 fall. He noted appellant's duties of carrying patient luggage, passing out and collecting meal trays, taking vital signs, assisting with bathing, and lifting heavy linens. Dr. Furr opined that appellant's "left shoulder rotator cuff tear resulting in surgery in April 2013 [was] directly related to the injury she sustained on October 8, 2009 and overuse of the shoulder secondary to compensation for the right shoulder injury with heavy lifting."

In an October 6, 2015 letter, OWCP advised appellant of the type of additional evidence needed to establish her recurrence claim, including a medical opinion from her attending physician demonstrating a worsening of the accepted condition such that she could no longer perform her light-duty job. Appellant was afforded 30 days to submit such evidence.

Appellant responded by October 21, 2015 letter, explaining that she claimed periods of disability relating to the April 2013 left shoulder surgery. She provided a July 15, 2015 report from Dr. Furr regarding her lumbar condition. Dr. Furr did not specify any period of disability. Appellant also submitted progress notes from Dr. Furr documenting her recovery from the April 2013 left rotator cuff repair.

By decision dated January 4, 2016, OWCP denied appellant's recurrence claim, finding that she did not submit medical evidence establishing a worsening of the accepted injuries that would disable her from light duty for any period. Dr. Nagy opined in August 2010 that the accepted lumbar and right knee injuries had attained maximum medical improvement. OWCP noted that it had not accepted a left or right shoulder injury under the present claim.

LEGAL PRECEDENT

OWCP's implementing regulations define a recurrence of disability as "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."⁴

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁵ This includes the necessity of

⁴ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2.b (June 2013). See also *Philip L. Barnes*, 55 ECAB 426 (2004).

⁵ *Albert C. Brown*, 52 ECAB 152 (2000); see also *Terry R. Hedman*, 38 ECAB 222 (1986).

furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶ An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.⁷

ANALYSIS

OWCP accepted that appellant sustained a lumbar sprain, right collateral ligament knee sprain, and a resolved right arm contusion when she fell down a stairway on October 8, 2009. Appellant returned to light-duty work with intermittent absences. She claimed a recurrence of disability commencing November 8, 2011, at which time she was performing modified duty. Appellant thus has the burden of providing sufficient evidence, including rationalized medical evidence, to establish the causal relationship asserted.⁸

In support of her claim, appellant submitted reports from Dr. Nagy, an attending Board-certified orthopedic surgeon, who found that she reached maximum medical improvement as of August 11, 2010. Dr. Nagy noted continued lumbar and right knee symptoms in reports through May 18, 2012 regarding nonoccupational shoulder conditions, but did not opine that the accepted injuries had worsened and caused disability during the period at issue. Therefore, his opinion is insufficient to meet appellant's burden of proof.⁹

Appellant also provided reports from Dr. Furr, an attending Board-certified orthopedic surgeon, who noted lumbar symptoms through July 15, 2015. Dr. Furr did not find appellant totally disabled for work due to her lumbar symptoms, or opine that the accepted lumbar sprain remained present or had worsened. Therefore, his opinion is insufficient to establish the claimed recurrence of disability.¹⁰

The Board notes there is a significant amount of the medical evidence of record related to bilateral shoulder injuries and surgeries, however, OWCP did not accept that appellant sustained an injury to either shoulder in the October 8, 2009 fall, due to a lack of medical rationale supporting causal relationship. Dr. Nagy remarked on May 18, 2012 that he could not determine if appellant's continuing right shoulder symptoms were due to the accepted October 2009 fall, or a preexisting condition. Dr. Furr opined that appellant sustained a left rotator cuff tear due to overcompensating for the weakened right shoulder. However, as OWCP did not accept a right shoulder injury, any consequential impact to the left shoulder cannot be compensable.

⁶ *Ronald A. Eldridge*, 53 ECAB 218 (2001); see *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁷ *Patricia J. Glenn*, 53 ECAB 159 (2001); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁸ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁹ *Albert C. Brown*, *supra* note 5.

¹⁰ *Id.*

OWCP advised appellant by October 6, 2015 letter to submit rationalized medical evidence regarding whether the accepted conditions in her claim had worsened on and after November 8, 2011 as claimed. Nothing was submitted. Without such rationalized medical evidence, OWCP properly denied her claim for a recurrence of disability.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability for intermittent periods commencing November 8, 2011 causally related to accepted right knee and lumbar sprains and a right upper extremity contusion.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 4, 2016 is affirmed.

Issued: July 19, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board